IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

Crl.L.P..No. 438 of 2007()

CC.74/2007 of J.M.F.C.-III, KOTTARAKAKARA

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PETITIONER/COMPLAINANT

T.R.ANU, THULASEEMANDIRAM,
NEELESWARAM, KOTTARAKKARA.

BY ADV. SRI.P.S.BIJU

RESPONDENTS: ACCUSED

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1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

2. UNNIKRISHNAN @ IRSHAD,
S/O.VASUDEVA KURUP,
OMICHERIYAZHIKATHU HOUSE,
CHATHALAM, PORUVAZHI VADAKE MURI.

R1-BY P.P..SRI.C.M. KAMMAPPU

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON 09/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. THANKAPPAN, J.

CRL.L.P.NO.438 OF 2007

Dated this the 9th day of July, 2007.

O R D E R

This is an application for special leave to appeal against the judgment in C.C.No.74/2007 on the file of the Judicial Magistrate of First Class-III, Kottarakkara. As per the complaint filed by the petitioner/complainant, the 2nd respondent/accused had borrowed an amount of Rs.1,50,000/= from the petitioner/complainant on 3.7.2005 and in discharge of the said amount, the 2nd respondent had issued Ext.P1 cheque in favour of the petitioner on 8.7.2005. When the cheque was presented for encashment, the same has been dishonoured on the ground of insufficiency of fund with the account of the 2nd respondent/accused. Complying the provisions regarding notice etc., the complaint has been filed before the court alleging that the 2nd respondent had committed the offence punishable under Section 138 of the N.I.Act. To prove the case against the 2nd respondent, the petitioner himself was examined as PW1 and relied on Exts.P1 to P6. On closing the evidence adduced on behalf of the petitioner, the 2nd respondent/accused was questioned under Section 313 of the Code of Criminal Procedure. Denying the

allegations in the complaint, the 2nd respondent/accused has stated that the cheque in question was not issued in favour of the petitioner either to return an amount of Rs.1,50,000/= which was borrowed by him as stated in the complaint whereas the same ccheque was issued as a security for getting a job being arranged by one Swami Preethathmanand in the S.N.D.P Devaswom. The further case of the 2nd respondent was that the cheque and an amount of Rs.1,50,000/= were also entrusted to the said Swami Preethathmanand. But, no job was given and said cheque in question issued as security has been misused by the petitioner for filing the complaint against him. It was also the case of the 2nd respondent that so many criminal cases are pending against the said Swamiji and C.C.No.1465/2005 is also pending against him. After considering the entire evidence , the trial court found that the petitioner/complainant miserably failed to prove that the cheque in question was issued in discharge of a legally enforcible debt. To come to this conclusion, the trial court also relied on the evidence of DW1, who was examined on behalf of the 2nd respondent, and also relied on Ext.D1 notice. The trial court found that the 2nd respondent had introduced the said Swamiji to the complainant/petitioner. On believing the evidence of DW1 and the

case set up by the 2nd respondent, the trial court found that the petitioner failed to prove that the cheque in question was issued in favour of the petitioner in discharge of any legally enforcible debt even if it was issued as security for liability of a 3rd party as set up by the petitioner. There is no evidence to prove the case before the lower court. In the above circumstances, this Court is of the view that the leave application is merit less and it is dismissed.

K. THANKAPPAN, JUDGE.

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